

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF OHIO, ET AL.

Petitioners,

v.

UNITED STATES ENVIRON-
MENTAL PROTECTION
AGENCY, ET AL.,

Respondents.

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Case No. 23-1183

Consolidated with 23-1157; 23-1181;
23-1190; 23-1191; 23-1193

STATEMENT OF ISSUES TO BE RAISED

Pursuant to the Court’s order on July 17, 2023, Petitioners in Case No. 23-1183 (Ohio, et al.), submit this non-binding, preliminary statement of issues to be raised regarding Respondents’ final action entitled *Federal ‘Good Neighbor Plan’ for the 2015 Ozone National Ambient Air Quality Standards*, 88 Fed. Reg. 36654 (June 5, 2023).

1. Whether the EPA usurped the States’ sovereign authority to regulate within its own borders under the Clean Air Act’s cooperative-federalism structure by denying the States reasonable opportunities to develop and implement their state implementation plans (“SIPs”) as required by the Act, *see* 42 U.S.C. §§7410(a)(1), (c)(1)(B), (k)(5), and coercing them into adopting the EPA’s preferred federal implementation plan (“FIP”) .

2. Because the FIP was aimed at allocating responsibility among upwind States for their contributions to pollution in downwind States, whether the FIP is now arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because the EPA has exempted six States—that are critical to accomplishing the FIP’s coordinated emissions-reductions goal—from regulation under the FIP.

3. Whether the FIP is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because it singles out some industrial sources for regulation that emit above the 100-tons-per-year threshold while excluding other, similarly situated industrial sources emitting at or above that threshold. Relatedly, this case presents the question whether the EPA’s selection of the 100-tons-per-year threshold was arbitrary and capricious.

4. Whether the FIP is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because it implicitly forces some upwind States to subsidize emissions reductions for other upwind States by imposing draconian reductions on petitioner States while going easier on other States that contribute to downwind pollution at the same, or higher, levels.

Dated: July 28, 2023

DAVE YOST
Ohio Attorney General

/s/ Mathura J. Sridharan

BENJAMIN M. FLOWERS

Solicitor General

MATHURA J. SRIDHARAN*

Deputy Solicitor General

**Counsel of record*

GREGG BACHMANN

Section Counsel – Environmental

30 East Broad Street, 17th Floor

Phone: 614-466-8980

Fax: 614-466-5087

mathura.sridharan@ohioago.gov

Counsel for the State of Ohio

THEODORE E. ROKITA
Attorney General of Indiana

PATRICK MORRISEY
Attorney General of West Virginia

/s/ James A. Barta (MJS per authority)

THOMAS M. FISHER

Solicitor General

JAMES A. BARTA

Deputy Solicitor General

Office of the Indiana Attorney General

IGC-South, Fifth Floor

302 West Washington Street

Indianapolis, IN 46204

(317) 232-0709

James.Barta@atg.in.gov

Counsel for State of Indiana

/s/ Lindsay S. See (MJS per authority)

LINDSAY S. SEE

Solicitor General

MICHAEL WILLIAMS

Principal Deputy Solicitor General

Office of the West Virginia Attorney

General

State Capitol, Bldg 1, Room E-26

Charleston, WV 25305

(682) 313-4550

Lindsay.S.See@wvago.gov

Counsel for State of West Virginia

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2023, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system.

/s/ Mathura J. Sridharan

Mathura J. Sridharan
Ohio Deputy Solicitor General